

IN RE: UBER TECHNOLOGIES, INC.,
PASSENGER SEXUAL ASSAULT
LITIGATION

This Document Relates To:

ALL CASES

Case No. 23-md-03084-CRB (LJC)

**ORDER REGARDING
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER DOCUMENTS
SHOULD BE SEALED**

Re: Dkt. No. 762

A. Introduction

Pursuant to Civil Local Rule 79-5(f), Plaintiffs filed an Administrative Motion to consider whether documents submitted with a joint discovery letter brief should be filed under seal based solely on Uber's designations of confidentiality. Dkt. No. 762. Uber filed a responsive brief and declaration seeking to maintain all of the documents at issue under seal, Dkt. Nos. 778, 778-1. Documents filed with discovery motions that are no "more than tangentially related to the merits of a case" may be maintained under seal on a showing of "good cause," as distinct from the more stringent standard of "compelling reasons" to seal documents filed in contexts more closely tied to the merits. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016). For the reasons discussed below, Uber's requests to maintain documents under seal is GRANTED in part and DENIED in part.

B. Analysis of Documents at Issue

Exhibit A is redacted except for one paragraph describing Uber's response to a rider's complaint. Dkt. No. 762-1 (under seal). The response that Uber describes is not remarkable. The unredacted paragraph includes no identifying information about the rider or the driver, and states only the date of the complaint and a very general description of Uber's response to the reported incident. Uber has not identified any harm that would result from disclosure. *See* Dkt. No. 778-1

1 (Shortnancy Decl.) ¶ 5. Although the Court recognizes all parties' understandable caution when it
2 comes to disclosing information about incidents of alleged sexual assault or other types of sexual
3 misconduct, no basis for sealing this particular document is apparent. Sealing is DENIED as to
4 Exhibit A.

5 Exhibit B is redacted in its entirety except for a list of data field categories at the top of the
6 first page. Dkt. No. 762-2 (under seal). Uber notes that Exhibit B "contains redactions of
7 identifying information of third parties," Shortnancy Decl. ¶ 6, but information that is already
8 redacted from the document is not a reason to seal the redacted version of the document, which
9 Plaintiffs submitted as evidence of Uber's purportedly overzealous redactions. Uber asserts that
10 the "unredacted portion are [sic] also confidential because it contains information related to data
11 fields collected and utilized by Uber in the course of its business," *id.*, but Uber's mere use of data
12 field categories does not in itself demonstrate any inherent sensitivity or risk of harm from
13 disclosure of those categories. Sealing is DENIED as to Exhibit B.¹

14 Uber has shown good cause to seal Exhibits C and D, which contain more substantive
15 information about Uber's internal policies. Dkt. Nos. 762-3, 762-4 (under seal); Shortnancy Decl.
16 ¶¶ 7–8. The same is true of Exhibit E, containing an individual's detailed description of an
17 incident of sexual assault that the individual alleged to have experienced the prior night. Dkt. No.
18 762-5; Shortnancy Decl. ¶ 9. Sealing is GRANTED as to those exhibits. This Order does not
19 consider whether "compelling reasons" would support sealing these documents if they are later
20 offered for a purpose more than tangentially related to the merits of the case.

21 Exhibit F is a chain of messages that appears to show two Uber representatives' pro forma
22 initial responses to a customer's report of sexual assault. Portions of the document—including the
23 customer's name, the Uber representatives' last names, and two URL addresses—are redacted.
24 The remainder does not appear to reveal any more information than messages that any member of
25

26 ¹ If disclosure of these data field categories presents any actual risk of competitive harm to Uber
27 that is not apparent from the face of the document or from Uber's conclusory supporting
28 declaration, Uber may file an administrative motion to maintain this document under seal no later
than September 9, 2024. If Uber does so, Plaintiffs shall refrain from filing Exhibit B in the public
record until after the Court resolves that motion.

1 the public who reported a sexual assault might expect to receive from Uber as an initial response
2 to state that an investigation has been opened. Uber has not identified any harm that could result
3 from disclosure of this document. *See* Shortnancy Decl. ¶ 10. Sealing is DENIED as to Exhibit F.

4 Exhibit G is a “Google Alerts” email received in late 2017 by an Uber employee showing
5 public news clippings, in which Uber has redacted individuals’ names. Other than the public news
6 clippings, this document reveals only that an Uber employee subscribed to alerts around seven
7 years ago for news related to the search terms “uber sexual assault.” Uber does not identify any
8 harm that might result from disclosure of this document. Shortnancy Decl. ¶ 11. Sealing is
9 DENIED as to Exhibit G.

10 Exhibit H is a spreadsheet in which all substantive information has been redacted. Uber
11 contends that the entire spreadsheet is confidential, asserting that “the document contains
12 redactions of personal identifying information of third parties, specifically driver IDs and email
13 addresses.” Shortnancy Decl. ¶ 12. Redacted information is no reason to seal the redacted version
14 of the document. Uber also asserts that “unredacted portion are [sic] also confidential because it
15 contains information related to data fields collected by Uber.” Shortnancy Decl. ¶ 12. The
16 unredacted data field labels are “driver_id” and “email,” which are the same categories identified
17 in the preceding sentence of Uber’s attorney’s declaration, which Uber filed in the public record.
18 Sealing is DENIED as to Exhibit H.

19 Exhibit I is a document that Uber seeks to seal in its entirety. Uber’s counsel Michael
20 Shortnancy asserts that this exhibit is “a redaction of an independent driver’s driver’s [sic] license,
21 which includes personal identifying information.” Shortnancy Decl. ¶ 13. Even that general
22 nature of the original document, though, would not be identifiable from publicly filing the
23 document at issue, which—other than a Bates number and multiple tags of confidentiality—is
24 simply a box with the word “REDACTED” in the center. Uber’s request to seal this document is
25 frivolous. Sealing is DENIED as to Exhibit I.

26 **C. Sealing Procedure for Future Joint Letters**

27 Rule 79-5(f) governs circumstances where a party files a “document that has been
28 designated as confidential by another party.” The use of that procedure for documents submitted

1 with a *joint* discovery letter, which is by nature filed by both parties, strains the scope of that rule
2 and leads to delayed filing of the reasoning for requests for sealing. The joint letter, as set forth in
3 Pretrial Order No. 8, requires the parties to exchange drafts, and the Court now clarifies that the
4 proposed exhibits to the joint letter must be part of that exchange. During that process, the
5 designating party therefore has an opportunity to specify which exhibits it believes should be
6 sealed in its entirety or redacted in part. Because the designating party has notice of the proposed
7 exhibits before the finalized joint letter is filed, the designating party that participated in the meet
8 and confer process is able to include its justification for sealing either at or soon after the filing of
9 the joint letter.

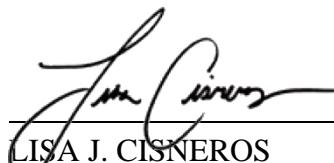
10 Going forward, the Court expects that administrative motions to file under seal that are
11 related to joint filings, along with supporting declarations from the designating party, will
12 normally be filed at the same time as the joint filings, or that a responsive statement or declaration
13 by the designating party pursuant to Rule 79-5(f)(3) will be filed within one business day
14 thereafter if the non-designating party files the joint letter. The designating party may file its
15 responsive statement or declaration within seven days of the filing of the administrative motion
16 only when a party's decision to include a document occurs too late for the opposing party that
17 designated that document as confidential to comply within one business day. Any response to the
18 designating party's responsive statement or declaration must be filed within two business days
19 after the designating party's response.

20 **D. Conclusion**

21 To complete the public record, Plaintiffs are ORDERED to file Exhibits A, B, F, G, H, and
22 I in the public record no later than September 9, 2024. These documents are to be filed in the
23 same redacted form in which they were submitted with Plaintiffs' Administrative Motion.

24 **IT IS SO ORDERED.**

25 Dated: September 3, 2024

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LISA J. CISNEROS
United States Magistrate Judge